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HOUSE BILL 347

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Don Tripp

AN ACT

RELATING TO CRIMINAL PROCEDURE; PERMITTING THE ELECTRONIC
RECORDING OF DEPOSITIONS OF VICTIMS AND WITNESSES UNDER SIXTEEN
YEARS OF AGE IN SEXUAL ASSAULT AND DOMESTIC VIOLENCE CASES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-9-17 NMSA 1978 (being Laws 1978,
Chapter 98, Section 1) is amended to read:

"30-9-17. [~~VIDEOTAPED~~] ELECTRONIC RECORDING OF
DEPOSITIONS OF ALLEGED VICTIMS [~~WHO ARE~~] AND WITNESSES UNDER
SIXTEEN YEARS OF AGE--PROCEDURE [~~USE IN LIEU OF DIRECT~~
~~TESTIMONY~~].--

A. In [~~any~~] a prosecution for criminal sexual
penetration, criminal sexual contact or criminal sexual contact
of a minor, upon motion of the district attorney and after
notice to the opposing counsel, the district court may, for [~~a~~]

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 good cause shown, order the [~~taking of a videotaped~~] electronic
2 recording of a deposition of any alleged victim or witness
3 under the age of sixteen years. The [~~videotaped~~] deposition
4 shall be taken before the judge in chambers, under oath, in the
5 presence of the district attorney, the defendant and [~~his~~] the
6 defendant's attorneys. Examination and cross-examination [~~of~~
7 ~~the alleged victim~~] shall proceed [~~at the taking of the~~
8 ~~videotaped deposition~~] in the same manner as permitted at trial
9 [~~under the provisions of Rule 611 of~~] pursuant to the New
10 Mexico Rules of Evidence. [~~Any videotaped~~]

11 B. An electronically recorded deposition taken
12 under the provisions of this [~~act~~] section shall be viewed and
13 heard at the trial and entered into the record in lieu of the
14 direct testimony of the alleged victim or witness.

15 [~~B. For the purposes of this section, "videotaped~~
16 ~~deposition" means the visual recording on a magnetic tape,~~
17 ~~together with the associated sound, of a witness testifying~~
18 ~~under oath in the course of a judicial proceeding, upon oral~~
19 ~~examination and where an opportunity is given for cross-~~
20 ~~examination in the presence of the defendant and intended to be~~
21 ~~played back upon the trial of the action in court.~~]

22 C. The supreme court may adopt rules of procedure
23 and evidence to govern and implement the provisions of this
24 [~~act~~] section.

25 D. The cost of [~~such videotaping~~] the electronic

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[bracketed material] = delete

1 recording shall be paid by the state.

2 E. ~~[Videotapes which]~~ Electronic recordings that
3 are a part of the court record are subject to a protective
4 order of the court for the purpose of protecting the privacy of
5 the victim or witness.

6 F. As used in this section, "electronic recording"
7 means a complete and authentic visual and audio recording
8 created by motion picture, videotape or digital media."

9 Section 2. A new section of the Family Violence
10 Protection Act is enacted to read:

11 "[NEW MATERIAL] ELECTRONIC RECORDING OF DEPOSITIONS OF
12 ALLEGED VICTIMS AND WITNESSES UNDER SIXTEEN YEARS OF AGE--
13 PROCEDURE.--

14 A. In a prosecution for a crime arising from a
15 domestic violence incident, upon motion of the district
16 attorney and after notice to the opposing counsel, the district
17 court may, for good cause shown, order the electronic recording
18 of a deposition of any alleged victim of or witness to a
19 domestic violence incident who is under sixteen years of age.
20 The deposition shall be taken before the judge in chambers,
21 under oath, in the presence of the district attorney, the
22 defendant and the defendant's attorney. Examination and cross-
23 examination shall proceed in the same manner as permitted at
24 trial pursuant to the New Mexico Rules of Evidence.

25 B. An electronically recorded deposition taken

.153568.1

underscoring material = new
~~[bracketed material] = delete~~

1 under the provisions of this section shall be viewed and heard
2 at the trial and entered into the record in lieu of the direct
3 testimony of the alleged victim or witness.

4 C. The supreme court may adopt rules of procedure
5 and evidence to govern and implement the provisions of this
6 section.

7 D. The cost of the electronic recording shall be
8 paid by the state.

9 E. Electronic recordings that are part of the court
10 record are subject to a protective order of the court for the
11 purpose of protecting the privacy of the victim or witness."

12 F. As used in this section, "electronic recording"
13 means a complete and authentic visual and audio recording
14 created by motion picture, videotape or digital media."